

NOT FOR PUBLICATION

**IN THE DISTRICT COURT OF THE VIRGIN ISLANDS  
DIVISION OF ST. CROIX  
APPELLATE DIVISION**

<b>RALPH BENJAMIN,</b>	)	<b>D.C. CRIM. APP. NO. 2003/017</b>
	)	
Appellant,	)	Re: Sup.Ct.Crim. 136/2002
	)	
v.	)	
	)	
<b>GOVERNMENT OF THE VIRGIN ISLANDS,</b>	)	
	)	
Appellee.	)	
	)	

---

On Appeal from the Superior Court of the Virgin Islands

**Considered: August 19, 2005  
Filed: December 9, 2005**

**BEFORE:**     **RAYMOND L. FINCH**, Chief Judge, District Court of the Virgin Islands; **CURTIS V. GOMEZ**, Judge of the District Court of the Virgin Islands; and **BRENDA J. HOLLAR**, Judge of the Superior Court, Sitting by Designation.

**APPEARANCES:**

**Amelia B. Joseph, Esq.**  
St. Croix, U.S.V.I.  
Attorney for Appellant.

**Matthew Phelan, AAG**  
St. Thomas, U.S.V.I.  
Attorney for Appellee.

**JUDGMENT OF THE COURT**

Following his conviction in the Superior Court on charges of assault first degree, unauthorized possession of a firearm during a crime of violence, and reckless endangerment, Ralph Benjamin

("Benjamin" or "appellant") filed this timely appeal. However, Benjamin's appellate counsel, Attorney Amelia Joseph, ("Attorney Joseph"), has now filed a brief in this case asserting the absence of merited issues for appeal and seeking to withdraw as counsel, pursuant to *Anders v. California*, 386 U.S. 738 (1967). Counsel has served the appellant with her *Anders* brief, as ordered by this Court in accordance with *Anders*, 386 U.S. at 744, to permit the appellant an opportunity to independently point the Court to any issues he deems meritorious. However, by letter dated May 4, 2005, the appellant indicated to the Court he was unable to do so without the assistance of counsel.

Under *Anders*, counsel seeking to withdraw from her representation on appeal is required to file a brief which reflects a conscientious effort to comb the trial record for appealable issues, before concluding the appeal is frivolous. See *Anders*, 386 U.S. at 744. Thus, the attorney may not simply submit a bare assertion of no merit but, rather, must submit a brief which refers "to anything in the record that might arguably support an appeal," along with reasoning to support her conclusion that the issues are frivolous. See *id.*; see also *Maddox v. Government of Virgin Islands*, 121 F. Supp. 2d 457, 460 (D.V.I. App. Div. 2000).

In *Maddox*, we noted that, faced with an *Anders* brief, the reviewing court also has a responsibility to conduct an independent examination of the proceedings "to decide whether the

case is wholly frivolous, unless it chooses to employ some alternative method of ensuring that defendants' right to effective representation are not compromised." *Maddox*, 121 F. Supp.2d at 459 (citing *Smith v. Robbins*, 528 U.S. 259, 264 (2000)) (noting states may adopt other procedures different from *Anders*, so long as they protect a defendant's right to counsel).

In this instance, the record submitted does not reflect counsel's zealous advocacy in combing the trial record, and the "Short Appendix," consisting of five pages excerpted from the trial transcript, does little to aid this Court's review of the cold record. *See United States v. Marvin*, 211 F.3d 778 (3d Cir. 2000) (finding record submitted in support of *Anders* brief insufficient, where the relevant trial objections were not identified and where the submission did not indicate counsel had adequately scoured the record); *see also Penson v. Ohio*, 488 U.S. 75, 81-82 (noting counsel's withdrawal warranted where *Anders* brief reflected no evidence of zealous advocacy). Moreover, counsel's similarly truncated brief merely includes the incantation for each issue that, "After a careful review of the case-law . . . counsel cannot find any meritorious issues to be raised on appeal." [Anders Br. (Argument)]. This single unsupported statement of no merit for each of the three issues identified sheds little light on the trial proceedings and is inadequate for this Court's determination. *See Maddox*, 121 F. Supp. 2d at 459.

Given Attorney Joseph's asserted inability to identify appellate issues and the inadequacy of the *Anders* filing, this Court will permit Attorney Joseph to withdraw and appoint new counsel to pursue this appeal. It is, therefore,

**ORDERED** that Attorney Joseph's motion to withdraw as appellate counsel in this matter is **GRANTED**. It is further

**ORDERED** that Beverly Edney, Esq. is appointed to prosecute this appeal. Further, it is

**ORDERED** that the Clerk shall issue a new briefing schedule in this matter.

**SO ORDERED** this \_\_\_\_ day of December, 2005.

**A T T E S T:**  
**WILFREDO F. MORALES**  
Clerk of the Court

By: \_\_\_\_\_

Deputy Clerk

**Copies to:**

Judges of the Appellate Panel  
The Hon. Geoffrey W. Barnard  
The Hon. George W. Cannon, Jr.  
Judges of the Superior Court  
Amelia Joseph, Esq.  
Matthew Phelan, AAG  
Appellate Law Clerks  
Wilfredo F. Morales

Theresa Thomas  
Monica Ruhle  
Jacqueline Jeffries  
Nydia Hess  
Kim Bonelli